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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,080	03/05/2001	Steven J. Schaffer	4675P007	3274

7590 07/15/2004

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EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 07/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/800,080

Applicant(s)

SCHAFFER ET AL.

Examiner

Bharat N Barot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 7 and 9 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 6, 8 and 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because it does not signed by one of the joint applicant (Jacob Weil).

Drawings

2. This application has been filed with informal drawings, which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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4. Claims 1-2, 5, 7, and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Qin et al (U.S. Patent No. 6,393,480). Qin's patent meets all the limitations for claims 1-2, 5, 7, and 9 recited in the claimed invention.

5. As to claim 1, Qin et al teach a method to measure an application's performance in a network, comprising within a thread, monitoring a flow having one or more frames (abstract and summary of the invention; figures 6-8; column 4 line to column 5 line 40) by calculating: an amount of time each of the frames is processed on a sending node in a network; an amount of time each of the frames is processed on a receiving node in the network; and an amount of time each of the frames is in transit across the network (figures 1-4; column 5 lines 3-9; column 5 line 41 to column 6 line 25; column 8 lines 8-49; and column 9 lines 25-42).

6. As to claim 2, Qin et al teach a method to analyze network performance resulting from a task (abstract and summary of the invention; figures 6-8; column 4 line to column 5 line 40), comprising displaying a first time representing a time that one or more meaningful frames are in a network traveling in a first direction; displaying a second time representing a time that one or more meaningful frames are in the network traveling in a second direction; displaying a third set of times representing times that each of one or more nodes in the network is active (figures 1-4; column 5 lines 3-9; column 5 line 41 to column 6 line 25; column 8 lines 8-49; and column 9 lines 25-42).

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7. As to claim 5, Qin et al teach that the first and second times, and the third set of times are displayed in a detailed report (summary of the invention; figures 1-4; column 5 line 41 to column 6 line 25; and column 8 lines 8-49).

8. As to claim 7, Qin et al teach method to monitor network performance resulting from a task (abstract and summary of the invention; figures 6-8; column 4 line to column 5 line 40), comprising displaying a processing time corresponding to a first node in the network, each processing time having one or more attributes, including a processing type (figures 1-4; column 5 lines 3-9 and 41-59; and column 8 lines 8-65).

9. As to claim 9, Qin et al teach that additionally comprising displaying one or more processing times, each processing time corresponding to a node in the network that is not the first node (column 2 lines 13-36; column 5 lines 3-9 and 41-59; column 6 lines 42-67; and column 8 lines 8-49).

Allowable Subject Matter

10. Claims 3-4, 6, 8, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claim 11 is allowable over the cited prior art of record.

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Additional References

12. The examiner as of general interest cites the following references.

- a. Lovette, U.S. Patent No. 6,747,985.
- b. Cartsonis et al, U.S. Patent No. 6,584,501.
- c. Adams, U.S. Patent No. 5,974,442.
- d. Hershey et al, U.S. Patent No. 5,375,070.

Contact Information

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharat Barot whose telephone number is (703) 305-4092. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, can be reached at (703) 308-6662. A central official fax number is (703) 872-9306.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-3900.

Patent Examiner Bharat Barot

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July 06, 2004


BHARAT BAROT
PRIMARY EXAMINER